

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Extending Wireless Telecommunications)
Services to Tribal lands)

WT Docket No. 99-266

COMMENTS OF TITAN WIRELESS

Titan Wireless ("Titan") hereby submits its comments in the above-captioned rulemaking proceeding, where the Commission is laudably exploring ways to encourage the provision of wireless telecommunications services to unserved or underserved Tribal lands. *See In the Matter of Extending Wireless Telecommunications Services to Tribal Lands*, Notice of Proposed Rulemaking, FCC 99-205 (rel. Aug. 18, 1999) ("NPRM"). Titan's background singularly equips it to respond to the challenges of connecting those underprivileged areas and making available to these Americans too the cornucopia of communications services available elsewhere in the nation. In short, to encourage such services, the Commission:

- should create an exception to Designated Entity transfer restrictions for transfers of auctioned licenses to entities committed to serving Tribal bands and other unserved areas;
- should create bidding credits in all Commission auctions for entities committed to such service;
- should immediately allow use of the extended C-band by earth stations located in these areas, and should relax coordination rules and power limits for proposed earth stations in those areas; and
- should monitor interconnection difficulties and facilitate Caller Pays Pricing options, which are likely to be particularly attractive to low-income mobile service users in those areas.

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A primary focus of Titan's activity has been the development of wireless solutions for unserved or underserved areas throughout countries in the Asia-Pacific region, Latin America and Africa – areas where the problems of spotty service are of course considerably more acute than in the U.S. In a number of joint ventures with regional operators that have honed its expertise on the problems of universal service, Titan has learned that the answer to these problems is almost always twofold:

- private innovation – implementing cheaper wireless technologies to tackle the economics of extraordinarily high “per pop” costs and low expected returns – matched by
- enlightened public policy – appropriate universal service supports and carefully structured regulatory incentives.

in a recent joint venture that Titan entered into in Guatemala, for example, one component for the success of the deal was the efficient wireless technology provided by Titan. Equally crucial to the economics of the deal, however, was the stream of universal service subsidies provided for this service by the Guatemalan regulators.

As the Commission is aware from Titan's prior submission in this proceeding, Titan Wireless has designed and provides a Very Small Aperture Terminal (“VSAT”) system that is well suited for service to remote areas, including Tribal lands. In addition, Titan provides key components of terrestrial wireless systems that can also be used for economical service to Tribal lands. Titan has a strong interest in tapping its international expertise and developing solutions for bringing broadband services to these areas, either in joint ventures with service providers or in the capacity of a service provider itself. In particular, Titan plans to bring to bear domestically its international experience in structuring “build-own-operate,” “build-operate-transfer” and similar types of arrangements with service providers, including cooperatives and local investment groups. Under such arrangements, Titan provides an optimized local

wireless system and in-depth operator support in exchange for revenue sharing. Depending on the particular case, the solutions offered by Titan will consist of a combination of satellite and terrestrial technologies, and will extend to broadband capabilities, including Internet and Worldwide Web access and VSAT Asymmetric Digital Subscriber Lines, and both fixed and mobile service applications.

At the same time, the inexorable economics of service to these perennially unserved or underserved areas mean plainly that support is needed, in the form both of focused universal service funding and of regulatory incentives such as those proposed here by the Commission. Titan applauds the Commission's initiatives in both this and the companion universal service rulemaking proceeding. Titan offers certain discrete comments to ensure that the regulatory incentives being considered by the Commission are promulgated, and that they become meaningful levers for extending wireless services to these areas.

I. TERRESTRIAL SERVICES

A. Exception to Designated Entity Transfer Restrictions

The NPRM appropriately focuses on wireless auction bidding credits as a method for encouraging service to Tribal lands. With respect to the credits earned by Designated Entities ("DE"s), the Commission asks whether it "should allow DE-to-non-DE transfers (or partnerships and similar arrangements between DEs and non-DEs) in instances where the non-DE transferee or assignee commits to provide service to tribal lands and other unserved areas (e.g., evidenced by an agreement with the tribal governing body)." NPRM at ¶ 36. Titan supports the Commission's proposal. Designated entities licensed for areas that include Tribal lands and proposing to grant attributable interests in their licenses to entities committing to serve these lands should be allowed to do so without subjecting themselves to any unjust enrichment payment. The exception should span all auctioned services.

In that respect, the Commission seeks comment on “whether DE-to-DE transfers should be limited to partitioning the portion of the DE licensee’s service area that covers the tribal land or other unserved area, or whether DEs should be able to transfer the entire license to a non-DE without restrictions conditioned on the provision of service to the tribal land or other unserved area.” *Id.* The Commission also notes that “[i]n the latter case, one alternative would be to reduce the unjust enrichment payment on a pro rated basis to reflect the portion of the licensing area or population by the tribal land or unserved area.” *Id.*

In Titan’s view, the effectiveness of the Commission’s proposal will turn entirely on how these questions are resolved: the proposed incentive will be meaningful only if it extends to the entire credit received by the DE for an entire licensing area including Tribal lands. In other words, DEs should not have to partition service areas to obtain the benefit of the exception; and, in cases of transfer of the entire license, it is meaningless to only reduce the unjust enrichment payment by the (often tiny) amount corresponding to the portion of the licensing area covered by Tribal lands. Any incentive limited to Tribal reservations would be self-defeating: the problem that needs to be solved here is that Tribal lands by themselves do not sustain profitable service. The opportunity to buy at a discount rights to provide unprofitable service is no incentive at all. The incentive is meaningful only if the discount extends to the entire license area encompassing a Tribal land.

At the same time, the proposed incentive should certainly be conditioned on provision of service to the Tribal land or other unserved areas encompassed within the licensing area. In that regard, the NPRM raises the question of how the transferee’s commitment is to be evidenced, and further seeks comment on “what criteria should be used to determine whether the DE has provided sufficient services.” *Id.*

Titan agrees that an agreement with the Tribal governing body should be one of the ways in which an applicant could evidence its commitment to serving Tribal lands. However, the Commission

should not establish rigid rules on the form of such an agreement. Thus, for example, an applicant's commitment could be sufficiently evidenced by a letter of intent executed by the Tribal authority and the applicant and conditioned, among other things, on the receipt of necessary approvals (including Commission approval).

Furthermore, while an agreement with the Tribal authority should be enough to qualify an applicant for the proposed credits, such an agreement should not be the only possible way of demonstrating an applicant's commitment to serving Tribal lands.¹ The Commission's inquiry into the appropriate criteria focuses correctly on tests for determining whether the applicant "has provided sufficient services." NPRM at ¶ 36. Compliance with a build-out schedule is the best way of making that determination. That schedule should in turn be determined by the build-out rules applicable to each service (as liberalized by the Commission pursuant to this rulemaking, see, e.g., NPRM at ¶ 23) and as applied to the Tribal lands in question (*i.e.*, the appropriate subset of the licensing area). Applicants receiving credits should be expected to satisfy their milestone requirements *specifically with respect to these lands*. Thus, for example, a non-DE purchaser of a Local Multipoint Distribution Service license receiving the proposed credit would be generally expected to make "substantial service" to these lands available within 10 years from original licensing, as demonstrated by coverage of 20% of the population of these areas or other factors.

On a case by case basis, of course, the Commission should also consider a licensee's request for a longer schedule if the circumstances provide good cause for such an extension. Barring an

¹ Thus, Titan does not believe that the benefits proposed in this rulemaking should be contingent on a binding agreement and all necessary Tribal approvals, as suggested elsewhere in the NPRM (at ¶¶ 40-42). Again, the build-out schedule would ensure that applicants who may not have all Tribal approvals proceed at their peril.

extension, the penalty for missing the milestones would equal the portion of the DE credit that would have been originally forfeited but for the Tribal service commitment, plus interest and (in the case of blatant failures to meet the milestone) a 10% penalty. Such rules should adequately curb the potential for abuse of this credit program and ensure to the extent possible that only serious-minded applicants will try to avail themselves of the credits.

B. Auction Bidding Credits for Provision of Service to Tribal Lands

The NPRM also seeks comment on “the possibility of awarding a bidding credit to bidders (whether DEs or non-DEs) who indicate that they intend to provide service to tribal lands and other unserved areas located within markets for which they are the winning bidder.” NPRM at ¶ 51. Titan strongly supports the credit being considered by the Commission. Bidding credits are one of the best tools at the Commission’s disposal for promulgating targeted incentives and affecting behavior by incentive rather than fiat. Moreover, bidding credits aimed at ameliorating lack of adequate telecommunications services should handily survive any constitutional scrutiny.

Regarding the method for quantifying the credit, however, Titan believes that it should simply be a discount equal to the highest credit available to DEs in the particular auction – for example, for LMDS, the 45% credit available to very small businesses.² For the same reasons set forth above, the credit should not be limited to the portion of the licensing area represented by Tribal lands. And for the same reasons, the credit should not be tied to the population of the Tribal land as a percentage of the licensing area population, as suggested in the NPRM at ¶ 51. Service to Tribal lands is unprofitable and

² Where an entity also qualifies for DE credits, it should be able to avail itself of both the DE discount and the Tribal land credit.

needs to be encouraged for the precise reason (among others) that their population may not warrant the needed investment; tying the amount of that credit to Tribal land population would therefore achieve very little.

The Tribal-service criteria should be the same as those applicable for the exception to the unjust enrichment rules. Titan agrees, of course, that the bidding credit should be contingent on a commitment to ensure that service to the lands in question is provided. On the other hand, a commitment by the bidder to spend the credit amount on specific property and equipment is an undue constraint on the use of funds that the Commission generally does not impose, and is moreover unnecessary if the Commission imposes build-out requirements specific to the lands in question as described above. In other words, in addition to its general milestone schedule, the winning bidder would be expected to satisfy the same criteria (for example 20% population coverage) with respect to these specific subsets of the licensing area. A binding agreement with the Tribal authority should not be a threshold qualification, but could be incorporated in the milestone schedule as an alternative way of meeting the licensee's obligations.

II. SATELLITE SERVICES

As Titan has already pointed out in its Comments in IB Docket No. 99-81, the Titan-developed VSAT system is extremely well suited for service to Tribal and other remote areas. It combines the low marginal cost of providing service to areas within an FSS satellite's footprint with relatively cheap ground infrastructure and with least-cost routing of calls to strategically located Gateway interconnection points. Of course, this type of service too needs encouragement in the form of a targeted policy of regulatory incentives and Titan again applauds the Commission's initiative.

A. The Commission Should Lift The Ban on Accepting Extended C-Band Earth Station Applications

One meaningful incentive considered by the Commission relates to increasing spectrum flexibility for such systems. As the Commission is aware, the extended C-band is allocated to the Fixed-Satellite Service ("FSS"), subject to a limiting footnote, but the Commission has frozen acceptance of earth station applications in the band for the duration of a pending rulemaking proceeding. See *In the Matter of Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band*, Notice of Proposed Rulemaking, 14 FCC Rcd. 1295, ¶¶13, 28 (1998).

Titan believes that this spectrum (3,625-3,700 MHz space to Earth, 5,850-5,925 MHz Earth to space) is essential for satellite systems, that it should be opened to FSS use consistent with its primary allocation, and that the footnote limiting its use to "international, intercontinental" systems is no longer necessary. In any event, and until the Commission makes a determination with respect to this band, the Commission should immediately suspend any restrictions on use of this band for service to Tribal lands. Service to Tribal lands is not likely to cause harmful interference concerns for the ship radar Radiolocation service that has a co-primary governmental allocation in the band. Lifting these restrictions would accordingly be consistent with the Commission's proposal to relax height/power rules for terrestrial services in light of the lessened interference concerns in these areas, and the Commission's consideration of "drop-in" applications in unallocated or unlicensed bands. Since the extended C-band is already allocated to the FSS, lifting the freeze on acceptance of earth station applications would be a small step compared to proposals to use unallocated spectrum.

For the same reasons, the Commission should consider affording additional flexibility with respect to the coordination of earth stations designed to serve Tribal lands. In light of the relatively lower expected use of the spectrum in those areas, for example, it would be appropriate to halve the 30-day

coordination period to 15 days. Further, the Commission should consider relaxing the VSAT power restrictions of 47 C.F.R. § 25.134.

B. The Commission Should Vigilantly Monitor Interconnection Difficulties

Another area where Commission action may be essential to sustainable service (whether terrestrial or satellite) to Tribal lands is that of interconnection. Such services will of course need to include telephone exchange service and exchange access and, as the Commission has already determined, incumbent local exchange carriers ("ILEC"s) are fully subject to the interconnection obligations of Sections 251 and 252 of the Communications Act with respect to such services, including Commercial Mobile Radio Services. Titan notes with concern the numerous reports and allegations of dilatory (or worse) tactics by ILECs in interconnection negotiations.³ These reports are especially troubling with respect to efforts to serve Tribal lands: where such tactics may hamper competitive local exchange service in general, they are bound to kill even more surgically service to Tribal lands, which is marginal to begin with. Titan urges the Commission to monitor such behavior with heightened vigilance within the scope of its existing authority and interconnection rules.

In addition, with respect to Commercial Mobile Radio Services, "calling party pays" may be a crucial component of service to Tribal lands in light of the lower income and increased price consciousness of subscribers in these areas. *See In the Matter of Calling Party Pays Service Offering in*

³ Arthur Brodsky, "Bliley Plans Further Probe Into SBC Document Destruction," *Communications Daily* (Nov. 5, 1999) (discussing SBC e-mail instructing destruction of documents on coping with local competition and U.S. West internal memorandum stating that "[c]orporate policy dictates that we will not proactively engineer for CLEC interconnection."); *see also* Bryan Gruly, "Battle Lines: As Phone Wars Move to Rural Towns, Tactics are Growing Rougher," *The Wall Street Journal* (Feb. 10, 1999) (relating interconnection difficulties encountered by Western Wireless).


the Commercial Mobile Radio Services, Notice of Proposed Rulemaking, FCC 99-137 (rel. July 7, 1999).

The Commission should quickly develop rules to accommodate CPP pricing, including in particular rules governing billing and collection by incumbent local exchange carriers.

III. CONCLUSION

Aided with the innovative incentives proposed by the Commission in this rulemaking, Titan believes that its experience in tackling problems of universal service worldwide can help make a difference and extend sorely needed services, including broadband services delivered in joint ventures with local investment groups and cooperatives, to underserved or unserved Americans.

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CERTIFICATE OF SERVICE

I, Pantelis Michalopoulos, hereby declare that a copy of the foregoing Comments of Titan Wireless was sent this 9th day of November, 1999 by messenger to the following:

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